

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

AGNES MALAPAD CRUZ
1750 Hayes Court
Placentia, California 92870

Registered Nurse License No. 627507

Respondent.

Case No. 2008-138

OAH No. L2008090720

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 30, 2009.

It is so ORDERED April 30, 2009.

Susanne Phillips MSN, RN, FNP-BC

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KAREN L. GORDON, State Bar No. 137969
Deputy Attorney General
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8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 **AGNES MALAPAD CRUZ**
1750 Hayes Court
14 Placentia, California 92870

15 Registered Nurse License No. 627507

16 Respondent.

Case No. 2008-138

OAH No. L2008090720

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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18 In the interest of a prompt and speedy settlement of this matter, consistent with the
19 public interest and the responsibility of the Board of Registered Nursing of the Department of
20 Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and
21 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
22 disposition of the Accusation.

23 **PARTIES**

24 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
25 the Board of Registered Nursing. She brought this action solely in her official capacity and is
26 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
27 by Karen L. Gordon, Deputy Attorney General.

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2. Agnes M. Cruz (Respondent) is represented in this proceeding by Attorney Fredrick M. Ray, whose address is 770 The City Drive, Suite 8100, Orange, CA 92868-6927

3. On or about October 3, 2003, the Board of Registered Nursing issued Registered Nurse License No. 627507 to Agnes M. Cruz. The license was in full force and effect at all times relevant to the charges brought in Accusation No. 2008-138 and will expire on April 30, 2009, unless renewed.

JURISDICTION

3. Accusation No. 2008-138 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 8, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2008-138 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

4. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2008-138. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

5. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 7. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2008-138.

4 8. Respondent agrees that her Registered Nurse License is subject to
5 discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

8 9. This stipulation shall be subject to approval by the Board of Registered
9 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
10 Board of Registered Nursing may communicate directly with the Board regarding this stipulation
11 and settlement, without notice to or participation by Respondent or her counsel. By signing the
12 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
16 action between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

18 10. The parties understand and agree that facsimile copies of this Stipulated
19 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
20 force and effect as the originals.

21 11. In consideration of the foregoing admissions and stipulations, the parties
22 agree that the Board may, without further notice or formal proceeding, issue and enter the
23 following Disciplinary Order:

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

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1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction
6 of this probation time period. Respondent's probation is tolled, if and when she resides outside
7 of California. Respondent must provide written notice to the Board within 15 days of any change
8 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where she has ever been
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
14 new nursing license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation,
16 shall submit or cause to be submitted such written reports/declarations and verification of actions
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency
22 in every state and territory in which she has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24
25 hours per week for 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
28 work in any non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
3 Board.

4 If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of her good faith efforts to comply with
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may
7 grant an extension of Respondent's probation period up to one year without further hearing in
8 order to comply with this condition. During the one year extension, all original conditions of
9 probation shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent
11 shall obtain prior approval from the Board before commencing or continuing any employment,
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to her employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within
18 seventy-two (72) hours after she obtains any nursing or other health care related employment.
19 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
20 terminated or separated, regardless of cause, from any nursing, or other health care related
21 employment with a full explanation of the circumstances surrounding the termination or
22 separation.

23 **8. Supervision.** Respondent shall obtain prior approval from the Board
24 regarding Respondent's level of supervision and/or collaboration before commencing or
25 continuing any employment as a registered nurse, or education and training that includes patient
26 care.

27 Respondent shall practice only under the direct supervision of a registered nurse
28 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative

1 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
2 are approved.

3 Respondent's level of supervision and/or collaboration may include, but is not
4 limited to the following:

5 (a) Maximum - The individual providing supervision and/or collaboration is
6 present in the patient care area or in any other work setting at all times.

7 (b) Moderate - The individual providing supervision and/or collaboration is in
8 the patient care unit or in any other work setting at least half the hours Respondent works.

9 (c) Minimum - The individual providing supervision and/or collaboration has
10 person-to-person communication with Respondent at least twice during each shift worked.

11 (d) Home Health Care - If Respondent is approved to work in the home health
12 care setting, the individual providing supervision and/or collaboration shall have person-to-
13 person communication with Respondent as required by the Board each work day. Respondent
14 shall maintain telephone or other telecommunication contact with the individual providing
15 supervision and/or collaboration as required by the Board during each work day. The individual
16 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
17 site visits to patients' homes visited by Respondent with or without Respondent present.

18 9. **Employment Limitations.** Respondent shall not work for a nurse's
19 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
20 traveling nurse, or for an in-house nursing pool.

21 Respondent shall not work for a licensed home health agency as a visiting nurse
22 unless the registered nursing supervision and other protections for home visits have been
23 approved by the Board. Respondent shall not work in any other registered nursing occupation
24 where home visits are required.

25 Respondent shall not work in any health care setting as a supervisor of registered
26 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
27 nurses and/or unlicensed assistive personnel on a case-by-case basis.

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1 Respondent shall not work as a faculty member in an approved school of nursing
2 or as an instructor in a Board approved continuing education program.

3 Respondent shall work only on a regularly assigned, identified and predetermined
4 worksite(s) and shall not work in a float capacity.

5 If Respondent is working or intends to work in excess of 40 hours per week, the
6 Board may request documentation to determine whether there should be restrictions on the hours
7 of work.

8 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
9 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
10 than six months prior to the end of her probationary term.

11 Respondent shall obtain prior approval from the Board before enrolling in the
12 course(s). Respondent shall submit to the Board the original transcripts or certificates of
13 completion for the above required course(s). The Board shall return the original documents to
14 Respondent after photocopying them for its records.

15 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
16 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
17 amount of \$4,700.00. Respondent shall be permitted to pay these costs in a payment plan
18 approved by the Board, with payments to be completed no later than three months prior to the
19 end of the probation term.

20 If Respondent has not complied with this condition during the probationary term,
21 and Respondent has presented sufficient documentation of her good faith efforts to comply with
22 this condition, and if no other conditions have been violated, the Board, in its discretion, may
23 grant an extension of Respondent's probation period up to one year without further hearing in
24 order to comply with this condition. During the one year extension, all original conditions of
25 probation will apply.

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1 12. **Violation of Probation.** If Respondent violates the conditions of her
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
3 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
4 license.

5 If during the period of probation, an accusation or petition to revoke probation has
6 been filed against Respondent's license or the Attorney General's Office has been requested to
7 prepare an accusation or petition to revoke probation against Respondent's license, the
8 probationary period shall automatically be extended and shall not expire until the accusation or
9 petition has been acted upon by the Board.

10 13. **License Surrender.** During Respondent's term of probation, if she ceases
11 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
12 probation, Respondent may surrender her license to the Board. The Board reserves the right to
13 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
14 take any other action deemed appropriate and reasonable under the circumstances, without
15 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
16 will no longer be subject to the conditions of probation.

17 Surrender of Respondent's license shall be considered a disciplinary action and
18 shall become a part of Respondent's license history with the Board. A registered nurse whose
19 license has been surrendered may petition the Board for reinstatement no sooner than the
20 following minimum periods from the effective date of the disciplinary decision:

21 (1) Two years for reinstatement of a license that was surrendered for any
22 reason other than a mental or physical illness; or

23 (2) One year for a license surrendered for a mental or physical illness.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Frederick Ray. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 12/30/2008
AGNES CRUZ
RespondentAPPROVAL

I have read and fully discussed with Agnes Cruz the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/30/08
FREDRICK RAY
Attorney for Respondent

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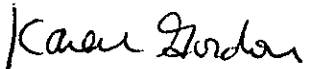
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 12-31-08

EDMUND G. BROWN JR., Attorney General
of the State of California

JAMES M. LEDAKIS
Supervising Deputy Attorney General



KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SD2007800870
Cruz.Stipulation.wpd

Exhibit A

Accusation No. 2008-138

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 JAMES M. LEDAKIS

Supervising Deputy Attorney General

3 KAREN L. GORDON, State Bar No. 137969

Deputy Attorney General

4 California Department of Justice

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Facsimile: (619) 645-2061

8 Attorneys for Complainant

10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. *2008-138*

14 **AGNES MALAPAD CRUZ**

10890 Lemon Drive

15 Yorba Linda, California 92886

A C C U S A T I O N

16 Registered Nurse License No. 627507

17 Respondent.

18
19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the
22 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
23 Affairs.

24 **Registered Nurse License**

25 2. On or about October 3, 2003, the Board issued Registered Nurse License
26 Number 627507 to Agnes Malapad Cruz ("Respondent"). The registered nurse license was in
27 full force and effect at all times relevant to the charges brought herein and will expire on
28 May 31, 2009, unless renewed.

STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

6. California Code of Regulations, title 16, section 1442, states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

7. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 FACTUAL BACKGROUND

4 9. On or about June 25, 2004, patient K.G., a 67 year old male patient with
5 diabetes and hypertension, was seen at GAMBRO Healthcare, Anaheim, California, for dialysis.
6 Patient K.G. received dialysis three times per week for three hours and thirty minutes each time.
7 On the same day, within a short time after starting dialysis, K.G. complained of severe back pain
8 and chills. Following completion of dialysis, Respondent arranged for K.G. to be transported in
9 his wheelchair to the emergency room at Anaheim Memorial Hospital, Anaheim, California. The
10 emergency room is physically connected to the healthcare center by an enclosed hallway.
11 Respondent failed to notify the emergency room of K.G.'s transfer to that department and K.G.
12 was left unattended in the emergency waiting room.

13 FIRST CAUSE FOR DISCIPLINE

14 (Gross Negligence)

15 10. Respondent is subject to discipline under Code section 2761, subdivision
16 (a)(1), on the grounds of unprofessional conduct, in that on or about June 25, 2004, while on duty
17 as a dialysis nurse at GAMBRO Healthcare, Anaheim, California, and caring for patient K.G.,
18 Respondent committed acts constituting gross negligence, as defined in California Code of
19 Regulations, section 1442, as follows:

- 20 a. Respondent failed to chart and follow physician's orders.
- 21 b. Respondent failed to inform her charge nurse when K.G. first complained
22 of chills and back pain.
- 23 c. Respondent failed to keep K.G.'s vascular assess open for laboratory tests,
24 administration of medications, or an IV as needed.
- 25 d. Respondent failed to transfer K.G. to the emergency with a report that
26 would assist those subsequently caring for the patient.
- 27 e. Respondent failed to advocate for K.G. by abandoning him in the
28 emergency room.

1 SECOND CAUSE FOR DISCIPLINE

2 (Incompetence)

3 11. Respondent is subject to discipline under Code section 2761, subdivision
4 (a)(1), on the grounds of unprofessional conduct, in that on or about June 25, 2004 while on duty
5 as an emergency room nurse at Anaheim Memorial Hospital, Anaheim, California, and caring for
6 patient K.G., Respondent committed acts constituting incompetence, as defined in California
7 Code of Regulations, section 1443, as more particularly set forth in paragraph 10, above.

8 THIRD CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 12. Respondent is subject to discipline under Code section 2761, subdivision
11 (a), on the grounds of unprofessional conduct, as more particularly set forth in paragraphs 10 and
12 11, above.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 16 1. Revoking or suspending Registered Nurse License Number 627507, issued
17 to Agnes Malapad Cruz;
- 18 2. Ordering Agnes Malapad Cruz to pay the Board of Registered Nursing the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
20 125.3; and,
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 10/23/07

23
24 *Ruth Ann Terry*
25 RUTH ANN TERRY, M.P.H., R.N.
26 Executive Officer
27 Board of Registered Nursing
28 Department of Consumer Affairs
State of California
Complainant